

803 KAR 25:125. Computation of attorney fee in award of retraining incentive benefits pursuant to KRS 342.732(1)(a) and interim attorney fee motions.

RELATES TO: KRS 342.040, 342.320, 342.732(1)(a)

STATUTORY AUTHORITY: KRS 340.260(1), 342.270(3), 342.732(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the executive director to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires that the executive director promulgate an administrative regulation to establish procedures for the resolution of claims. KRS 342.732 and 342.792 set forth the requirements for retraining incentive benefits. This administrative regulation establishes requirements for computing attorney's fee awards for claims for retraining incentive benefits in order to assist with the claims process and allow claimants to obtain appropriate legal assistance from an attorney.

Section 1. (1) Awards for an attorney's fee involving retraining incentive benefits shall be made in accordance with KRS 342.320 and 342.040.

(2) If benefits are awarded for retraining pursuant to KRS 342.732(1)(a), an attorney shall file a motion to request an attorney's fee.

(3) Interim attorney's fees shall only be paid upon the review and order of an administrative law judge.

(4)(a) Interim attorney's fee motions shall be filed not less than six (6) months from the time the claimant is enrolled in a bona fide retraining program or GED program.

(b) Interim attorney's fee motions may be filed:

1. At six (6) months intervals following the first order for the interim attorney's fee;
2. At the completion of training; or
3. Upon termination from the program.

Section 2. (1) A value shall be placed on the award, and an attorney's fee shall be awarded if the claimant:

(a) Is enrolled and has been accepted in a bona fide training program or GED program; and

(b) Does not defer the beginning of benefits pursuant to KRS 342.732(1)(a)5.

(2) If the claimant has enrolled in a bona fide retraining program or GED program, the value of the award shall be based upon the number of weeks completed at the time the interim attorney's fee motion is filed.

(3)(a) Any value computed for an attorney's fee shall be limited to the number of weeks of the program completed multiplied by the weekly benefits paid to the claimant.

(b) Costs of tuition, books, completion bonus and moving expenses shall not be considered as part of the benefits in computing the attorney's fee.

(4) An original award for retraining pursuant to KRS 342.732(1)(a) shall direct the employer and its insurance carrier or Coal Workers' Pneumoconiosis Fund (CWPF), in claims brought under KRS 342.792, to withhold a specified amount or percentage from each benefit payment in accordance with the percentage limitations specified in KRS 342.320(2)(a).

(5) All interim fees awarded by an administrative law judge as specified in subsection (4) of this section shall be paid directly to the attorney in a lump sum by the employer, its insurance carrier or the Coal Workers' Pneumoconiosis Fund (CWPF), subject to the percentage limitations specified in KRS 342.320(2)(a).

(6) If the amount withheld by the employer, its insurance carrier or the Coal Workers' Pneumoconiosis Fund (CWPF), as required by subsection (4) of this section, is greater than the amount of the attorney's fee for the interim period, the excess amount shall be paid to the

claimant. (30 Ky.R. 178; 867; eff. 10-31-2003; TAm eff. 8-9-2007; Crt eff. 3-29-2019.)